

FAIR POLITICAL PRACTICES COMMISSION
Memorandum

To: Chairman Randolph and Commissioners Blair, Downey, Huguenin and Remy

From: Emelyn Rodriguez, Counsel, Legal Division
John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: Adoption of Amendments to Regulation 18942 – the Gift Regulation
Involving Wedding Gifts, Baby Showers and Receptions; and an Update on
Regulation 18944

Date: April 11, 2006

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I. EXECUTIVE SUMMARY

This memorandum addresses proposed amendments to regulation 18942 under the Political Reform Act (the “Act”),¹ relating to “gifts” received through attendance of wedding receptions, birthdays, holidays and other similar occasions. Also addressed in this memorandum is the status of proposed amendments to regulation 18944, which has grown into a separate regulatory project in response to questions and public comments raised at the Commission’s February 2006 meeting.

The amendments to regulation 18942 were proposed, in part, to clarify the scope of regulation 18946.2(b) involving the reporting of invitation-only events by public officials and candidates. Officials in attendance at such events are required to report his or her pro rata share of the cost of the event, if his or her pro rata share of the cost of the event is \$50 or more.² Although not contemplated at the time the amendments were adopted, the language of the “invitation-only” regulation is broad enough to encompass attendance at weddings, birthday parties and similar special events of personal significance.

At its February 2006 meeting, the Commission heard pre-notice discussion regarding this issue. The Commission considered proposed amendments to regulation 18942(a)(8), that are consistent with the exception under section 89503(e)(2), which would clarify that food, drink, entertainment and nominal benefits received by an official attending an event of personal significance such as a wedding reception, birthday, holiday or other similar occasion fall under the “gifts exchanged” exception, and therefore are not subject to gift limits and reporting rules so long as the gifts exchanged are not substantially disproportionate in value.

¹ Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations.

² In addition, an official reporting attendance at such events would also be subject to the \$360 gift limit and disqualification rules.

The Commission favored adoption of the proposed amendments to regulation 18942 in order to clarify the scope of the “invitation-only” events regulation. The Commission, did however, suggest some clarifying changes and these amendments are incorporated in the revised language that was noticed with the Office of Administrative Law (“OAL”) for adoption at the Commission’s May meeting. No comments have been received.

The Commission also considered at the February meeting, proposed amendments to regulation 18944 that would add a specific provision stating that gifts given directly to an official but intended for use by the official’s child (such as baby shower gifts), are gifts to the child. This is a further codification of the Commission’s opinion, *In re Cory* (1976) 2 FPCC Ops. 48.

During the February meeting, there was public comment requesting that the Commission look into further clarifying amendments to regulation 18944, so that it would be easier for the public to understand. There was also a request to further codify the portion of the *Cory* opinion that referred to circumstances negating intent by a donor to make an indirect gift to an official. Because these proposed amendments to regulation 18944 would be more extensive and would require further review, it has evolved into a separate regulatory project. Amendment of regulation 18944 is currently set for adoption in July, so that staff may hold an interested persons’ meeting in May to receive additional public comment and suggestions.

II. BACKGROUND AND AUTHORITY

This regulatory project was proposed last year by the Commission’s Technical Assistance Division, after the division received inquiries from the regulated community expressing concern that the definition of “invitation-only” events was so broad, as to include attendance of wedding receptions. Amendments to regulation 18942 attempt to narrow the scope of the invitation-only events regulation.

Staff’s prenotice memorandum had a thorough discussion of the applicable statutes and regulations. (See “Prenotice Discussion of Amendments to Regulations 18942 and 18944 – Gift Regulations Involving Wedding Gifts, Baby Showers and Receptions” [Legal Division memorandum to Chairman Randolph and Commissioners, dated January 25, 2005.]) The main points are briefly summarized below for easy reference.

The Act places certain restrictions and reporting requirements on the receipt of gifts by public officials and candidates. Elected officials, candidates for elective office, and certain state agency officials and designated employees who accept gifts, are subject to gift reporting rules, gift limits and disqualification rules.

Under the Act, a gift is defined as:

“...any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” (Section 82028(a).)

There are certain exceptions to the definition of “gift” under the Act including: informational material, gifts that are not used and returned within 30 days of receipt and gifts from certain enumerated family members, among others. (Section 82028(b).)

A. Presents exchanged at holidays, birthdays or similar occasions

Presents exchanged at holidays, birthdays or similar occasions are *not reportable nor subject to gift limits* provided that the gift exchanged is not substantially disproportionate in value. (Regulation 18942(a)(8).)

As noted in the prior memorandum, this exception reflects a series of legislative and regulatory refinements since 1978. This exception was based on the *nature of the relationship* between the donor and the recipient of a gift. The rationale behind the exception was that regular exchanges of gifts that flowed from familial ties or close personal relationships were not considered the type of transactions that would likely be within policy considerations of the Act because such exchanges were usually not done with the intent to influence or curry political favor with the recipient.³

The Act also provides under section 89503(e)(2) that that certain “gifts,” while reportable, are not subject to the gift limits of the Act (e.g., wedding presents). (Section 89503(e)(2) and regulation 18942(b).)

In addition, there are rules regarding gift reporting, gift limits, disqualification and specific rules involving lobbyists, which were discussed in detail in the prenotice memorandum.

The proposed changes are consistent with the general purpose of the reporting provisions of the Act, which require disclosure of those transactions that might improperly influence a public official because of their economic or monetary effect. The changes are also consistent with the Commission’s long standing view that certain transactions – such as an exchange of gifts due to family ties or personal friendships, where the intent is not to curry political favor—are outside the policy considerations of the Act.

³ Similar considerations were also expressed in the *Cory* opinion (*In re Cory* (1976) *supra*, which was cited in a Legal Division memorandum (by Sarah T. Cameron, dated April 24, 1978), as a basis for the exceptions. The *Cory* opinion took into account a working or social relationship between a donor and the recipient of a gift as part of the overall analysis as to whether there was intent to make an indirect gift to an official.

B. *Wedding Gifts*

Legal Division memoranda indicate that staff has long treated wedding gifts differently than other gifts for reporting purposes. Staff believed wedding gifts could be distinguished from other gifts exchanged on a more frequent basis, such as birthday and holiday gifts, because of the issue of consideration, and the longer time period in which an exchange of wedding gifts takes place, if at all. It was also based on an assumption that individuals normally receive wedding gifts from the same people to whom they (or their families) give such gifts. Thus such gifts do not ordinarily raise the suspicion that they are being made to influence official action, but rather as expressions of friendship or familial ties, if they are not unusually large. However, staff did not want a blanket exception for wedding gifts either, so that wedding gifts from corporations, businesses or lobbyists, which are more than likely made to influence public officials, must still be disclosed under the regulation.⁴

In 1990, legislation was passed specifically providing that wedding gifts would not be “limited or prohibited” under section 89504 (renumbered to 89503 and applied to specified local officials and candidates in 1995).

In 1994, the Commission adopted regulation 18942, which incorporated the statutory exemption for wedding gifts under 18942(b)(2). The Commission interpreted language in section 89503(e) to state that wedding gifts are reportable but *not* subject to limits.

III. PROPOSED AMENDMENTS TO REGULATION 18942

At its February 2006 meeting, the Commission heard pre-notice discussion regarding proposed amendments to regulation 18942.

- At the meeting, Commissioner Downey suggested a minor clarifying change which would state that the definition of gifts and exceptions to the gift rules expressed in regulation 18942 (and other related gift regulations) are pursuant to, or for the purposes of, section 82028. This suggestion is incorporated in the opening sentence of regulation 18942(a).
- Public comment was also received from Scott Hallabrin of the Assembly Ethics Committee, who proposed that there be a reference to the “invitation-only” rule, in subdivision (a)(8) of regulation 18942.⁵ He said this would clarify that the changes to regulation 18942 are to limit the scope of the “invitation-only” regulation. This

⁴ Legal Division memorandum by Barbara Milman dated March 19, 1981 regarding “Reporting of Wedding Gifts.”

⁵ Mr. Hallabrin also commented on the use of the word “subdivision” referring to amendments to regulation 18942, subdivision (a)(8). He stated that the reference appeared to refer back to the entire paragraph (a), and not subdivision (a)(8). He stated that in other regulations, the Commission says “subdivision” referring to the paragraph and not to sub-paragraphs. The Commission, consistent with OAL practice, uses subdivision to refer to both paragraphs and sub-paragraphs. (i.e. subdivision (a) and subdivision (a)(8).)

suggestion has been incorporated in proposed amendments to regulation 18942(a)(8), as discussed below.

Proposed Amendments to regulation 18942(a)(8):

The proposed regulatory amendment to regulation 18942(a)(8) would clarify that food, drink, entertainment and nominal benefits received by an official attending an event of personal significance such as a wedding reception, birthday, holiday or other similar occasion (hosted by another individual, not a corporation) fall under the “gifts exchanged” exception of section 89503(e)(2), and therefore are not subject to gift limits and reporting rules so long as the gifts exchanged are not substantially disproportionate in value.

The proposed amendments to regulation 18942(a)(8) would state that:

“(a) For purposes of Government Code section 82028, ~~None~~ none of the following is a gift and none is subject to any limitation on gifts....” (The regulation would then proceed to list the various items that fall within the exception, in subdivisions (a)(1)-(a)(8).)

The amendments would also specify that:

“(8) ~~Presents~~ Gifts exchanged between an ~~official~~ individual who is required to file a statement of economic interests and ~~an~~ another individual, other than a lobbyist, on holidays, birthdays, or similar occasions to the extent provided that the ~~presents~~ gifts exchanged are not substantially disproportionate in value. For purposes of this subdivision (a)(8), and notwithstanding 2 Cal. Code Regs. section 18946.2(b), “gifts exchanged” includes food, beverages, entertainment, and nominal benefits provided at the occasion by the honoree or another individual, other than a lobbyist, hosting the event.”

These proposed amendments narrow the scope of regulation 18946.2(b) with respect to “invitation-only” events. The language is broad enough to cover a range of occasions of personal significance where gifts (such as presents and/or food, drink and other nominal benefits) are customarily exchanged, such as weddings, retirement parties, the birth, adoption or baptism of a child, or even memorial services.

For instance, persons attending a memorial service to honor an individual who has passed away may bring food for other guests or provide flowers at the event. These tokens would more likely be motivated by friendship or familial ties, rather than a desire to gain political influence. In return, these attendees often receive food, refreshments or other nominal benefits from their hosts. Therefore, an “exchange” of gifts occurs at the event.⁶ Although such gifts have some economic value, they would not be the type of

⁶ The regulatory language in 18942(a)(8) as amended would allow for the exchange of gifts to occur at a later time as long as such an exchange occurs. If an exchange does not occur, then the gift is

transactions that would be governed by, or would fall within the policy considerations of, the Act.⁷ In addition, the persons attending such an occasion would also likely be among same group of persons with whom an official would regularly exchange gifts at holidays, birthdays and other events of personal significance.

With regard to wedding gifts, although not specified in the proposed regulatory language, they will continue to be reportable, but not subject to gift limits (under regulation 18942(b)(2)) due to the specific provisions of section 89503(e), as discussed above.

IV. STAFF RECOMMENDATION

Staff recommends that the Commission approve for adoption the proposed amendments to regulation 18942.

Attachment:

Proposed amendments to regulation 18942

reportable. For instance, an individual can attend a friend's birthday party and receive a gift of food, refreshments and entertainment. This individual need not bring a present or gift to this particular event in order for an exchange to occur, but can instead provide a present at another time or host the friend at a future occasion in return.

⁷The Commission points out in an opinion, (*In re Cory* (1975) 1 FPPC Ops. 153) that, "In any tolerable society, people lend assistance to their acquaintances and even to strangers in ways which have theoretical economic value but do not, in any real sense, represent economic transactions. It is absurd to suppose that the repairing of a fence by a neighbor, the offering of a ride, the fixing of a flat tire or hundreds of similarly friendly acts are 'gifts' which must be reported under the Act....everyday acts of fellowship constitute little threat to the integrity of public officials." (See also the *Chouteau* Advice Letter, No. A-98-246, which also quoted from the *Cory* opinion, stating that flowers and food (including beverages) sent or brought to the funeral service of a mayor's husband and subsequent family gathering are not reportable gifts under the Act.)